

**In re: JACK STEPP AND WILLIAM REINHART.**  
**HPA Docket No. 94-0014.**  
**Ruling Denying Respondents' Petition for Reconsideration of the Order**  
**Lifting Stay filed May 23, 2000.**

Sharlene A. Deskins, for Complainant.  
Respondents, Pro se.  
*Ruling issued by William G. Jenson, Judicial Officer.*

On May 6, 1998, I issued a Decision and Order: (1) concluding that Respondent Jack Stepp violated section 5(2)(B) of the Horse Protection Act of 1970, as amended (15 U.S.C. § 1824(2)(B)), and that Respondent William Reinhart violated section 5(2)(D) of the Horse Protection Act of 1970, as amended (15 U.S.C. § 1824(2)(D)); (2) assessing Jack Stepp and William Reinhart [hereinafter Respondents] each a \$2,000 civil penalty; and (3) disqualifying each Respondent -from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction, for 1 year. *In re Jack Stepp*, 57 Agric. Dec. 297 (1998). On May 27, 1998, Respondents filed a Petition for Reconsideration of the Decision and Order, which I denied based on my finding that Respondents' Petition for Reconsideration of the Decision and Order was not timely filed. *In re Jack Stepp*, 57 Agric. Dec. 323 (1998) (Order Denying Pet. for Recons.).

On June 30, 1998, Respondents requested a stay of the order in *In re Jack Stepp*, 57 Agric. Dec. 297 (1998), pending the outcome of proceedings for judicial review, and on July 1, 1998, I granted Respondents' request for a stay. *In re Jack Stepp*, 58 Agric. Dec. 397 (1998) (Stay Order).

Respondents filed an appeal with the United States Court of Appeals for the Sixth Circuit, which affirmed the May 6, 1998, Decision and Order. *Reinhart v. United States Dep't of Agric.*, 188 F.3d 508 (Table), 1999 WL 646138 (6<sup>th</sup> Cir. 1999) (not to be cited as precedent under 6<sup>th</sup> Circuit Rule 206).

On March 23, 2000, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], filed a Motion to Lift Stay; on April 18, 2000, Respondents filed a brief In Opposition to Motion to Lift Stay [hereinafter Reply to Motion to Lift Stay]; and on April 19, 2000, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Complainant's Motion to Lift Stay.

On April 26, 2000, I issued an Order Lifting Stay. *In re Jack Stepp*, 59 Agric. Dec. \_\_\_\_ (Apr. 26, 2000) (Order Lifting Stay); on May 15, 2000, Respondents filed a Petition for Reconsideration of the Order Lifting Stay; on May 19, 2000, Complainant filed Response to Petition for Reconsideration of the Order Lifting Stay; and on May 22, 2000, the Hearing Clerk transmitted the record of the

proceeding to the Judicial Officer for a ruling on Respondents' Petition for Reconsideration of the Order Lifting Stay.

Respondents contend in their Petition for Reconsideration of the Order Lifting Stay that my determinations in the Order Lifting Stay that Respondents filed their Reply to Motion to Lift Stay on April 18, 2000, and that Respondents' Reply to Motion to Lift Stay was late-filed, are error.

The Hearing Clerk served Respondents with Complainant's Motion to Lift Stay on March 27, 2000. *In re Jack Stepp*, 59 Agric. Dec. \_\_\_, slip op. at 2-3 (Apr. 26, 2000) (Order Lifting Stay). Section 1.143(d) of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes [hereinafter the Rules of Practice] provides that a response to a written motion must be filed within 20 days after service of the motion, as follows:

**§ 1.143 Motions and requests.**

. . . .

(d) *Response to motions and requests.* Within 20 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge or the Judicial Officer, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response; however, the Judge or the Judicial Officer, in their discretion, may order that a reply be filed.

7 C.F.R. § 1.143(d).

Based on section 1.143(d) of the Rules of Practice (7 C.F.R. § 1.143(d)), Respondents would have been required to file a response to Complainant's Motion to Lift Stay no later than April 16, 2000. However, April 16, 2000, was a Sunday, and section 1.147(h) of the Rules of Practice provides that when the time for filing expires on a Sunday, the time for filing shall be extended to the next business day, as follows:

**§ 1.147 Filing; service; extensions of time; and computation of time.**

. . . .

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

7 C.F.R. § 1.147(h).

Therefore, Respondents were required to file their Reply to Motion to Lift Stay no later than April 17, 2000. Respondents submit with their Petition for Reconsideration of the Order Lifting Stay an attachment that indicates that Respondents mailed their Reply to Motion to Lift Stay to the Hearing Clerk on April 13, 2000 (Pet. for Recons., Attach. A). Further, Respondents submit with their Petition for Reconsideration of the Order Lifting Stay an attachment that indicates that the United States Postal Service delivered Respondents' Reply to Motion to Lift Stay to "Washington DC 20250" at 11:37 a.m., on April 14, 2000 (Pet. for Recons., Attach. B). Moreover, the envelope containing Respondents' Reply to Motion to Lift Stay indicates that an employee of the United States Department of Agriculture, Mail & Reproduction Management Division, Mail Services Branch, received Respondents' Reply to Motion to Lift Stay at 11:30 a.m., on April 14, 2000. However, the date and time of receipt stamped by the Hearing Clerk on Respondents' Reply to Motion to Lift Stay establishes that the Hearing Clerk did not receive Respondents' Reply to Motion to Lift Stay until 2:05 p.m., April 18, 2000. The delay between receipt of Respondents' Reply to Motion to Lift Stay by the United States Department of Agriculture, Mail & Reproduction Management Division, Mail Services Branch, and receipt of Respondents' Reply to Motion to Lift Stay by the Hearing Clerk, is inexplicable.

Section 1.147(g) of the Rules of Practice provides that a document authorized to be filed under the Rules of Practice is deemed to be filed at the time when it reaches the Hearing Clerk, as follows:

**§ 1.147 Filing; service; extensions of time; and computation of time.**

. . . .

(g) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Hearing Clerk; or, if authorized to be filed with another officer or employee of the Department it shall be deemed to be filed at the time when it reaches such officer or employee.

7 C.F.R. § 1.147(g).

Neither Respondents' mailing the Reply to Motion to Lift Stay nor the United States Postal Service's delivering the Reply to Motion to Lift Stay to the United States Department of Agriculture, Mail & Reproduction Management Division,

Mail Services Branch, constitutes filing with the Hearing Clerk.<sup>1</sup> Therefore, Respondents' Reply to Motion to Lift Stay, which was required to be filed no later than April 17, 2000, was late-filed.<sup>2</sup>

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<sup>1</sup>See *In re Harold P. Kafka*, 58 Agric. Dec. 357, 365 (1999) (Order Denying Late Appeal) (stating that the respondent's unsuccessful efforts to file his appeal petition with the Hearing Clerk do not constitute filing the appeal petition with the Hearing Clerk), *appeal docketed*, No. 99-5313 (3<sup>d</sup> Cir. May 13, 1999); *In re Sweck's, Inc.*, 58 Agric. Dec. 212, 213 n.1 (1999) (stating that appeal petitions must be filed with the Hearing Clerk; indicating that the hearing officer erred when he instructed the litigants that appeal petitions must be filed with the Judicial Officer); *In re Daniel E. Murray*, 58 Agric. Dec. 77, 82 (1999) (Order Denying Pet. for Recons.) (stating that the effective date of filing a document with the Hearing Clerk is the date the document reaches the Hearing Clerk, not the date the respondent mailed the document); *In re Anna Mae Noell*, 58 Agric. Dec. 130, 140 n.2 (1999) (stating that the date typed on a pleading by a party filing the pleading does not constitute the date the pleading is filed with the Hearing Clerk; instead, the date a document is filed with the Hearing Clerk is the date the document reaches the Hearing Clerk), *appeal docketed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-10608-A (11<sup>th</sup> Cir. Feb. 7, 2000); *In re Severin Peterson*, 57 Agric. Dec. 1304, 1310 n.3 (1998) (Order Denying Late Appeal) (stating that neither the applicants' mailing their appeal petition to the Regional Director, National Appeals Division, nor the receipt of the applicants' appeal petition by the National Appeals Division, Eastern Regional Office, nor the National Appeals Division's delivering the applicants' appeal petition to the Office of the Judicial Officer, constitutes filing with the Hearing Clerk); *In re Gerald Funches*, 56 Agric. Dec. 517, 528 (1997) (stating that attempts to reach the Hearing Clerk do not constitute filing an answer with the Hearing Clerk); *In re Billy Jacobs, Sr.*, 56 Agric. Dec. 504, 514 (1996) (stating that even if the respondent's answer had been received by the complainant's counsel within the time for filing the answer, the answer would not be timely because the complainant's counsel's receipt of the respondent's answer does not constitute filing with the Hearing Clerk), *appeal dismissed*, No. 96-7124 (11<sup>th</sup> Cir. June 16, 1997).

<sup>2</sup>The record indicates that Respondents' Reply to Motion to Stay was not late-filed due to any inadvertence on the part of Respondents. Nevertheless, the Rules of Practice are binding on the Judicial Officer, and I cannot deem Respondents' late-filed Reply to Motion to Lift Stay to have been timely filed. See *In re Far West Meats*, 55 Agric. Dec. 1033, 1036 n.4 (1996) (Ruling on Certified Question) (stating that the Judicial Officer and the administrative law judge are bound by the Rules of Practice); *In re Hermiston Livestock Co.*, 48 Agric. Dec. 434 (1989) (stating that the Judicial Officer and the administrative law judge are bound by the Rules of Practice); *In re Sequoia Orange Co.*, 41 Agric. Dec. 1062, 1064 (1982) (stating that the Judicial Officer has no authority to depart from Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted from Marketing Orders). Cf. *In re*, 59 Agric. Dec. \_\_\_, slip op. at 15-17 (Mar. 31, 2000) (Order Denying Pet. for Recons.) (stating that the administrative law judges and the Hearing Clerk are bound by the Rules of Practice and neither the administrative law judges nor the Hearing Clerk has the authority to modify the Rules of Practice); *In re Kinzua Resources, LLC*, 57 Agric. Dec. 1165, 1179-80 (1998) (stating that generally administrative law judges and the Judicial Officer are bound by the rules of practice, but they may modify the rules of practice to comply with statutory requirements, such as the deadline for agency approval or disapproval of sourcing area applications set forth in section 490(c)(3)(A) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. § 620b(c)(3)(A)); and holding that the chief administrative law judge did not err when he modified the Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990); *In re Stimson Lumber Co.*, 56 Agric. Dec. 480, 489 (1997) (stating that generally administrative law judges and the Judicial Officer are bound by the rules of practice, but they may modify the rules of practice to comply with statutory requirements, such as

Moreover, as I stated in *In re Jack Stepp*, 59 Agric. Dec. \_\_\_, slip op. at 3 (Apr. 26, 2000) (Order Lifting Stay), even if Respondents' Reply to Motion to Lift Stay had been timely filed and I considered Respondents' Reply to Motion to Lift Stay, I would grant Complainant's Motion to Lift Stay. I issued the Stay Order in this proceeding pending the outcome of proceedings for judicial review, proceedings for judicial review are concluded, and Respondents have not raised any meritorious basis in their Reply to Motion to Lift Stay or in their Petition for Reconsideration of the Order Lifting Stay for denying Complainant's Motion to Lift Stay.

Therefore, Respondents' Petition for Reconsideration of the Order Lifting Stay is denied and the Order Lifting Stay will not be disturbed.

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the deadline for agency approval or disapproval of sourcing area applications set forth in section 490(c)(3)(A) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. § 620b(c)(3)(A)); and holding that the chief administrative law judge did not err when he modified the Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990).